STATE OF MICHIGAN

COURT OF APPEALS

SHELLY BELGIORNO,

Plaintiff-Appellee,

v

MARC BELGIORNO,

Defendant-Appellant.

UNPUBLISHED
October 20, 2000

No. 227281
Midland Circuit Court
Family Division
LC No. 96-006249-DM

Before: Wilder, P.J., and Smolenski and Whitbeck, JJ.

PER CURIAM.

Defendant appeals as of right from orders awarding physical custody of the parties' minor child to plaintiff. We vacate and remand for reconsideration.

Plaintiff and defendant divorced on November 18, 1997. The judgment of divorce, entered by Circuit Judge Paul J. Clulo, awarded the parties joint legal and physical custody of Sydney. Over two years later, in February, 2000, plaintiff moved to revise the custody order, alleging that the child primarily resided with plaintiff and was enrolled in school. After a brief hearing by an acting circuit judge, the court awarded plaintiff physical custody until the end of the school year, with visitation for defendant. The court also ordered that an evidentiary hearing be conducted before September, 2000.

Defendant first argues that the custody dispute should have been assigned to the judge who presided over the parties' original divorce proceedings. The authority to reassign judges or cases presents a question of law. *Schell v Baker Furniture Co*, 232 Mich App 470, 480-481; 591 NW2d 349 (1998), aff'd 461 Mich 502 (2000). In a custody case, questions of law are reviewed for clear legal error. *Fletcher v Fletcher*, 447 Mich 871, 876-877; 526 NW2d 889 (1994). Where an action has been assigned to a particular judge, subsequent actions arising out of the same transaction or occurrence must be assigned to that same judge. MCR 8.111(D)(1). Where two or more matters involving the same family members are within the jurisdiction of the circuit court's family division, those matters shall be assigned to the same judge to whom the first case was assigned, if practicable. MCL 600.1023(1); MSA 27A.1023(1). However, our Supreme Court may assign an elected judge of any state court to serve as a judge in another court for a limited period or specific assignment. MCL

600.225(1); MSA 27A.225(1). The Supreme Court has superintending authority over the circuit courts, including the ability to assign judges to circuit courts, and the Supreme Court may exercise this authority through the office of the State Court Administrator (SCAO). *In re Huff*, 352 Mich 402, 418-419; 91 NW2d 613 (1958); MCL 600.225(2); MSA 27A.225(2); MCR 8.103(4).

Defendant's argument assumes that the chief judge of the circuit court reassigned this case to the acting circuit judge. Contrary to defendant's assumption, the SCAO issued the order that reassigned this case. The SCAO temporarily assigned the acting judge to the Family Division of the Midland Circuit Court and directed that he "cover all post-judgment matters unless assignment has been terminated." Although this assignment appears to conflict with MCR 8.111(D)(1) and MCL 600.1023(1); MSA 27A.1023(1), it is within the broad scope of our Supreme Court's superintending authority over the circuit court. "'The power of superintending control is an extraordinary power. It is hampered by no specific rules or means for its exercise.'" *Huff*, *supra*, 352 Mich 417-418, quoting 14 Am Jur, Courts, § 265. Therefore, we conclude that the assignment of defendant's custody matter to the acting judge did not constitute legal error.

Defendant next argues that the trial court erred by modifying the custody arrangement contained in the judgment of divorce without conducting an evidentiary hearing, and by failing to state on the record its findings and conclusions regarding the requisite change of circumstances, the existence of an established custodial relationship, and the best interest factors. In custody cases, this Court reviews the trial court's findings of fact under the "great weight of the evidence" standard, reviews discretionary rulings for an abuse of discretion, and reviews questions of law for clear legal error. *McCain v McCain*, 229 Mich App 123, 125; 580 NW2d 485 (1998). The decision to modify an initial custody order is a discretionary dispositional ruling that should be affirmed absent an abuse of discretion. *Fletcher*, *supra*, 447 Mich 880.

Defendant primarily argues that the trial court erred because it did not conduct an evidentiary hearing before it entered an order modifying the parties' custody. We agree. The conditions for modifying an existing custody order are provided in MCL 722.27(1)(c); MSA 25.312(7)(1)(c). This statute does not require that a trial court conduct an evidentiary hearing prior to modifying a custody order. However, the court is required to make specific findings of fact and conclusions of law in contested custody cases. MCR 3.210(D)(1); MCR 2.517(A)(1); *McCain*, *supra*, 229 Mich App 124. Further, this Court has held that a trial court cannot change custody simply on the basis of the pleadings or a friend of the court report, without holding an evidentiary hearing. *Schlender v Schlender*, 235 Mich App 230, 233; 596 NW2d 643 (1999); *Mann v Mann*, 190 Mich App 526, 529-530; 476 NW2d 439 (1991). We find that the trial court abused its discretion when it modified the custody order without conducting an evidentiary hearing.

Defendant also argues that the trial court erred because it did not determine whether plaintiff had shown proper cause or a change of circumstances warranting a change of custody. A trial court has the authority to modify an existing custody order only "for proper cause shown or because of change of circumstances." MCL 722.27(1)(c); MSA 25.312(7)(1)(c); *Dehring v Dehring*, 220 Mich App 163, 164-165; 559 NW2d 59 (1996).

The trial court did state, "we have a change of circumstances," but the court did not identify what the change of circumstances was. This statement was made in a context that implies that the court found a change of circumstances due to either defendant's relocation or due to the child's enrollment in school. This Court has previously held that a party's intrastate move does not provide sufficient cause or change of circumstances to support a change of custody. *Id*. at 165-167. However, because the court failed to state the reason for its decision on the record, it is not possible for this Court to determine whether the trial court's finding was against the great weight of the evidence. In contested postjudgment motions to modify custody orders, the trial court is required to make findings of fact and conclusions of law. MCR 3.210(D)(1). We remand this case so that the trial court can place its findings of fact on the record regarding the change of circumstances required under MCL 722.27(1)(c); MSA 25.312(7)(1)(c).

Defendant also claims that the court erred because it neither determined whether an established custodial environment existed, nor stated its findings of fact regarding the best interests factors on the record. Before a trial court can modify an existing custody order, it must determine whether an established custodial environment exists. MCL 722.27(1)(c); MSA 25.312(7)(1)(c); *Hayes v Hayes*, 209 Mich App 385, 387; 532 NW2d 190 (1995). If an established custodial environment exists, the court may only modify the custody order if the party seeking modification establishes by clear and convincing evidence that a change in custody is in the child's best interests. MCL 722.27(1)(c); MSA 25.312(7)(1)(c); *Mann*, *supra*, 190 Mich App 530-531. To determine the child's best interests, the court must apply the statutory factors cited in MCL 722.23; MSA 25.312(3).

Contrary to defendant's claim, the court did determine that an established custodial environment existed with plaintiff. However, the court did not explain why it found that plaintiff had an established custodial environment. A custodial environment is established if over an appreciable time the child naturally looks to one custodian for guidance, discipline, the necessities of life, and parental comfort. MCL 722.27(1)(c); MSA 25.312(7)(1)(c). Factors to be considered in this determination include the age of the child, the physical environment, and the inclination of the custodian and the child regarding the permanency of the relationship. *Id*. A trial court's determination that a custodial environment exists is a factual determination that will not be disturbed unless it is against the great weight of the evidence. MCL 722.28; MSA 25.312(8); *Fletcher*, *supra*, 447 Mich 876-877.

It is not possible to determine from the lower court record on what ground the court found that a custodial environment existed. "Where a trial court fails to make a finding regarding the existence of a custodial environment, this Court will remand unless there is enough information in the record for this Court to make its own determination." *Jack v Jack*, 239 Mich App 668, 670; 610 NW2d 231 (2000). The parties in this case presented very little testimony and no documentary evidence. In fact, the trial court allowed only its own questioning of the parties, and limited its questions to which party spent more time with the child during the previous year. This evidence is insufficient to support a proper determination whether an established custodial environment existed, and we remand the case for specific findings of fact. MCR 3.210(D)(1); MCR 2.517(A)(1).

Regarding analysis of the best interests factors of MCL 722.23; MSA 25.312(3), it appears to this Court that the lower court never addressed this issue. Review of the transcript reveals that the court

neither stated its findings on each factor, nor did the court even reference the statutory factors. The failure of the trial court to consider and explicitly state its findings and conclusions regarding each factor prior to modifying the custody order constitutes error requiring reversal. *Daniels v Daniels*, 165 Mich App 726, 730-731; 418 NW2d 924 (1988). We therefore vacate the lower court orders placing physical custody with plaintiff and remand the case to the trial court with instructions to make specific findings of fact regarding the factors of MCL 722.23; MSA 25.312(3).

In summary, we vacate the lower court's orders changing physical custody of the parties' minor child. We direct the lower court to conduct an evidentiary hearing regarding the motion to change physical custody. At the conclusion of that evidentiary hearing, the lower court shall state specific findings of fact and conclusions of law on the record. The lower court shall determine whether an established custodial environment exists, and whether proper cause or a change of circumstances exists which justifies a change of custody, as provided by MCL 722.27(1)(c); MSA 25.312(7)(1)(c). The lower court shall also address the statutory factors contained in MCL 722.23; MSA 25.312(3), to determine the best interest of the minor child.

Vacated and remanded. We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Michael R. Smolenski
/s/ William C. Whitbeck